

CHAPTER 4
ENLISTED SEPARATIONS
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CHAPTER 4

ENLISTED SEPARATIONS

I. REFERENCES.

- A. AR 600-8-2, Suspension of Favorable Personnel Actions (FLAGS).
- B. AR 600-9, The Army Weight Control Program.
- C. AR 600-85, Alcohol and Drug Abuse Prevention and Control Program.
- D. AR 601-280, Total Army Retention Program.
- E. AR 635-200, Personnel Separations - Enlisted Personnel (1 Nov 2000).

II. INTRODUCTION.

Enlisted administrative separations is the area of military personnel law that governs how enlisted soldiers leave the Army. Strictly speaking, the topic covers both favorable (i.e., retirement or Honorable Discharge at expiration of term of service (ETS)) and unfavorable separations. This outline focuses on those involuntary and voluntary separations that senior leaders will most likely encounter.

It is useful to analyze enlisted separations along four dimensions. These axes frequently determine how fast, or indeed whether, a separation can be accomplished.

- Who has authority to order (i.e., direct or approve) the separation?
- How will the separation be characterized (i.e., what type of discharge will the soldier receive)? What will be the impact on the soldier's future?
- What procedural steps are required to separate the soldier?
- On what substantive basis (or "chapter") will the separation be processed? Is the separation voluntary or involuntary?

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III. **AUTHORITY TO ORDER SEPARATIONS.** AR 635-200, para 1-19 [hereinafter, citations without reference to a regulation will be to AR 635-200].

- A. **Secretary of the Army.** Virtually unlimited authority.
- B. **GCMCA** (General Court-Martial Convening Authority). All chapters, except Secretary of the Army plenary authority cases (para 5-3), reduction in force, strength limitations, or budgetary constraints (para 16-7); QMP (chap 19); voluntary separations of soldiers serving indefinite enlistments (para 4-4); conviction by a foreign court (paras 1-41a and d, para 14-9a); and early release from AD of RC personnel serving AGR tours under Title 10 (para 15-5).
- C. **General officer (GO) in command with a legal advisor.** Most chapters, *except* secretarial authority cases (para 5-3), lack of jurisdiction (5-9), discharge in lieu of court-martial (Chap 10).
- D. **SPCMCA** (Special Court-Martial Convening Authority).
 - 1. Chap 5, Convenience of the Government (less 5-9, Lack of Jurisdiction).
 - 2. Chap 6, Dependency or Hardship.
 - 3. Chap 7, Defective Enlistments, Reenlistments, and Extensions (except OTH).
 - 4. Chap 8, Pregnancy.
 - 5. Chap 9, Alcohol or Other Drug Abuse Rehabilitation Failure.
 - 6. Chap 10, Discharge in Lieu of Court-Martial (if delegated, at a post with a PCF, for AWOLs; may approve before trial, but may not disapprove)
 - 7. Chap 11, Entry Level Performance and Conduct.
 - 8. Chap 12, Retirement
 - 9. Chap 13, Unsatisfactory Performance.
 - 10. Chap 14, Misconduct (only with a General Discharge; Honorable or OTH goes to GCMCA or GO in command).
 - 11. Chap 15, Homosexual Conduct (unless OTH Discharge warranted).

12. Chap 16, Selected Changes in Service Obligations.
 13. Chap 18, Failure to Meet Body Fat Standards (notification cases only).
- E. **LTC-level commander with a legal advisor** (includes MAJ(P) assigned to LTC position; does not include MAJ or MAJ(P) Acting Commander). Only the following:
1. Chap 8, Pregnancy (voluntary discharge).
 2. Chap 9, Alcohol or Other Drug Abuse Rehabilitation Failure (notification cases only).
 3. Chap 11, Entry Level Performance and Conduct.
 4. Chap 13, Unsatisfactory Performance (notification cases only).
 5. Chap 16, Selected Changes in Service Obligations (voluntary).
 6. Chap 18, Failure to Meet Body Fat Standards (notification cases only).
- F. Only HQDA may involuntarily discharge a soldier with 18 or more years of active Federal service.
- G. The separation authority's three questions.
1. Sufficient evidence?
 - a) Burden on the government, not the soldier (or "respondent").
 - b) **Preponderance** (50% +), *not* higher criminal standard of proof beyond a reasonable doubt.
 2. Retain or separate?
 3. Characterization of service?

IV. CHARACTERIZATION OF SERVICE OR TYPE OF DISCHARGE.

Characterization of service will be based on the quality of the soldier's service, including the reason for separation . . . subject to the limitation under the various reasons for separation. The quality of service will be determined according to standards of acceptable personal conduct and performance of duty for military personnel. These standards are found in the UCMJ, directives and regulations issued by the Army, and the time-honored customs and traditions of military service.

AR 635-200, para 3-5a.

A. Overview.

1. Honorable.
2. General (under honorable conditions).
3. Under Other Than Honorable Conditions.
4. Entry Level status (uncharacterized).
5. Order of release from the custody and control of the Army by reason of void enlistment or induction.
6. [Dropped from the rolls.]
7. [Punitive discharge (Dishonorable or Bad Conduct discharges). Only as a result of approved court-martial sentence.]

B. Honorable discharge.

1. “[A]ppropriate when the quality of the soldier’s service generally has met the standards of acceptable conduct and performance of duty for Army personnel....” AR 635-200, para 3-7a(1).
2. Look to the pattern of behavior, not isolated incidents.
3. Soldier receives DD Form 256A, Honorable Discharge Certificate.
4. Usually required if Government first introduces limited use information from the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) during discharge proceedings.

C. **General** discharge (under honorable conditions).

1. “[I]ssued to a soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.” AR 635-200, para 3-7b(1).
2. Only permitted if the reasons for separation (chapter) specifically authorizes it. Never permitted for ETS.
3. Soldier receives DD Form 257A, General Discharge Certificate.
4. Impact on benefits.
 - a) No civil service retirement credit for time spent on active duty.
 - b) No education benefits. Money paid in to Montgomery GI Bill is forfeited.
 - c) Many states will not pay unemployment compensation.
 - d) “I understand that I may expect to encounter substantial prejudice in civilian life.”
5. No automatic upgrading of discharges. Upgrading requires application to the Army Board for Correction of Military Records (ABCMR) or the Army Discharge Review Board (ADRB), and the ultimate success rate is very low.

D. Under Other Than Honorable (**OTH**) Conditions.

1. Authorized under certain chapters for a pattern of behavior, or one or more acts or omissions, “that constitutes a significant departure from the conduct expected of soldiers of the Army.” AR 635-200, para 3-7c(1) & (2).
2. Board hearing required, unless waived by the soldier or the separation is voluntary (i.e., Chap 10).
3. No discharge certificate issued (but soldier still receives DD Form 214 with characterization of service annotated).
4. “I . . . understand . . . I may be ineligible for many or all benefits as a veteran under both Federal and State laws and . . . I may expect to encounter substantial prejudice in civilian life.”

5. When approved by separation authority, automatically reduces an enlisted soldier to Private, E-1, by operation of law.
6. No automatic upgrading of discharges. Upgrading requires application to the ABCMR or the ADRB. Chances of success are very low.

E. **Entry Level** status (uncharacterized).

1. For “unsatisfactory performance and/or conduct while in entry-level status” (first 180 days of creditable service, or first 180 days of creditable service after a break in service of over 90 days).
2. Counseling and rehabilitation essential before separation.
3. No characterization of service.
4. Not a *per se* bar to veteran’s benefits, but has the effect of disqualifying the soldier for most federal benefits, since most require service of over 180 days to qualify.

F. Release from custody and control of the Army (para 3-9).

1. Usually no characterization of service, since the person never acquired military status. Exception for constructive enlistment.
2. Very rare; used only for void enlistments.
3. Since no “service,” no veteran’s benefits.

V. **PROCEDURAL CATEGORIES AND ADMINISTRATIVE CONSIDERATIONS.**

A. Overview.

1. Soldier initiated (i.e., voluntary).
2. Notification cases.
3. Board hearing cases.

B. Soldier initiated (i.e., voluntary).

1. Procedure.

- a) Soldier initiates action by memorandum or DA Form 4187 with supporting documentation.
- b) Forwarded through command channels to approval authority.
- c) Limited procedural rights for the soldier.

2. Applicable separation chapters.

- a) Chap 6, Dependency or Hardship.
- b) Chap 8, Enlisted Women--Pregnancy.
- c) Chap 10, In Lieu of Trial by Court-Martial.
- d) Most of Chap 16, Selected Changes in Service Obligations (includes VSI and SSB).

C. **Notification cases.**

1. Procedure. Paras 2-2 and 2-3.

- a) Counseling and rehabilitative transfer requirements apply to many separations.
 - (1) Counseling always *required* under (para 1-16):
 - (a) Involuntary separation due to parenthood, para 5-8.
 - (b) Personality disorder, para 5-13.
 - (c) Physical or mental condition, para 5-17.
 - (d) Entry Level Performance and Conduct, Chap 11.

- (e) Unsatisfactory Performance, Chap 13.
 - (f) Minor disciplinary infractions or a pattern of misconduct, para 14-12a or b.
 - (g) Overweight, Chap 18.
- (2) Rehabilitative transfer generally *required* for separations under (1)(d) (e) & (f) above.
- (a) Trainees recycled between companies or platoons at least once.
 - (b) Others recycled between battalion-sized units or larger at least once, with at least 3 months at each unit.
 - (c) PCS only for “meritorious cases” where soldier is a “distinct asset” to the Army.
 - (d) Waiver authorized if transfer would serve no useful purpose or would not produce a quality soldier. Examples:
 - (i) Two consecutive APFT failures.
 - (ii) Pregnancy while in entry-level status.
 - (iii) Highly disruptive or suicidal.
 - (iv) Resistance to rehabilitative efforts.
 - (v) Small installation or remote location.
 - (vi) Transfer detrimental to soldier or Army. (i.e. indebtedness, ASAP or mental health counseling)

- b) Commander notifies soldier in writing that soldier's separation is recommended. Soldier must sign acknowledgment of receipt.
 - (1) Cite specific allegations and provisions of regulation that authorize separation.
 - (2) Least favorable characterization of service soldier could receive.
 - (3) Right to consult with counsel.
 - (4) Right to submit statements.
 - (5) Right to obtain copies of all matters going to separation authority.
 - (6) Right to a hearing if soldier has six years or more of combined active and reserve service on date separation is initiated.
- c) Soldier may consult with counsel; submit matters within seven duty days (or request extension).
- d) Action forwarded through command channels to separation authority for final action.
- e) Legal review.
 - (1) No *requirement* for legal review unless ADAPCP limited use evidence (typically, Chap 9; will include some Chap 13 or 14 separations) involved.
 - (2) As a practical matter, most SJA offices try to do a legal review twice: first, before packet is presented to soldier; second, before final action goes to the separation authority.

2. Notification procedure alone may be used when:

- a) Soldier has less than six years of combined active and reserve service on date separation is initiated.

- b) Command does not seek to impose an OTH discharge.
- c) Regulation permits for:
 - (1) Some provision of Chap 5, Convenience of the Government.
 - (2) Chap 7, Defective Enlistments/Reenlistments and Extensions.
 - (3) Chap 9, Alcohol or Other Drug Abuse Rehabilitation Failure.
 - (4) Chap 11, Entry Level Performance and Conduct.
 - (5) Chap 13, Unsatisfactory Performance.
 - (6) Chap 14, Misconduct, but only when service should be characterized as General.
 - (7) Chap 18, Failure to Meet Body Fat Standards.

D. Board hearing cases.

- 1. Procedure. Paras 2-4 through 2-12.
 - a) Soldier entitled to all rights listed under Notification Procedure, *supra*. Added rights:
 - (1) Counsel for representation (no right to counsel of choice).
 - (2) Right to a board hearing.
 - (3) Right to submit a conditional waiver.
 - (4) Fifteen-day notice before the hearing.
 - (5) Challenge board members for cause.
 - (6) Request witnesses.

- (7) Submit matters to the board.
 - (8) Question witnesses.
 - (9) Choose whether or not to submit to examination by the board.
 - (10) Argue to the board.
- b) Board hearing.
- (1) Composition. Para 2-7. Three or more voting members, SFC or above, all senior to the respondent. Majority commissioned or warrant officers. One must be MAJ or above. If soldier is female or member of a minority group and so requests, a board member must be female or a member of a minority group.
 - (2) Formal rules of evidence (i.e., Military Rules of Evidence (MRE), contained in the Manual for Courts-Martial (MCM)) do not apply. See para 2-11.
 - (a) See AR 15-6.
 - (b) Standard for admission of evidence: relevant and competent.
 - (c) Limited privileges preserved.
 - (d) Coerced statements excluded.
 - (e) Bad faith unlawful searches by military members excluded.
 - (f) Polygraph evidence admitted only by agreement of the parties.
 - (3) Government represented by a "Recorder."
 - (4) Legal advisor. Not required by para 2-7a. If appointed, rules finally on all matters of evidence and challenges except to himself or herself.

- (5) President rules on all matters of procedure and all matters of evidence if no legal advisor appointed. May be overruled by a majority of the board.
 - (6) Voting members meet in closed session and return findings and recommendations. Be sure board answers the required questions; use a findings worksheet as you would in a court-martial.
- c) Final action. Para 2-6.
- (1) Legal review required “by a qualified officer fully cognizant of applicable regulations and policies to determine whether the action meets the requirements of [AR 635-200].” Para 2-6a.
 - (a) No *requirement* for reviewing officer to be a JA unless:
 - (i) OTH recommended.
 - (ii) Soldier identified specific legal issues for consideration by separation authority.
 - (iii) Limited use evidence was introduced.
 - (b) As a practical matter, most SJA offices try to do a legal review twice: first, before packet is presented to soldier; second, before final action goes to the separation authority.
 - (2) Separation authority's action may be no less favorable than the board's recommendations, para 2-6d, unless separation authority submits a request for separation under para 5-3 to HQDA (TAPC-PDT-SS) for action by the Secretary of the Army, para 2-6e.
 - (3) Separation authority may suspend execution of an approved separation (except for fraudulent entry or homosexual conduct) for up to six months. Para 1-18. Upon satisfactory completion of the probation period (or earlier) separation authority will cancel execution of

the approved separation. If there is further misconduct, may be basis for new separation action, disciplinary action, or vacation of the suspension.

2. Required.
 - a) Any case where command seeks to impose an OTH.
 - b) Any case when soldier has six years or more of combined active and reserve service on date separation action is initiated.
 - c) Any separation under Chap 15, Homosexual Conduct.

- E. **Administrative double jeopardy** (para 1-17). Soldiers will not be processed for administrative discharge under Chaps 11, 13, 14, 15 , or AR 604-10 (Military Personnel Security Program) for conduct that has been the subject of:
 1. A prior judicial proceeding resulting in acquittal, or a finding of not guilty only by reason of lack of mental responsibility;
 2. A prior board action resulting in an approved finding that the evidence did not sustain the factual allegation concerning the conduct; or
 3. A prior separation action if the separation authority ordered retention.
 4. Exceptions.
 - a) Conduct or performance after the prior proceeding.
 - b) Fraud or collusion not known at time of prior proceeding.
 - c) New evidence not known at time of prior proceeding despite due diligence.

- F. **Separation pay**. DoD Instr. 1332.29.
 1. General prerequisites.
 - a) More than six but less than twenty years service immediately before discharge.

- b) Agrees to enter Ready Reserve for three years.
 - c) Involuntary discharge or denial of reenlistment.
2. Full separation pay.
- a) Honorable discharge required.
 - b) Fully qualified for retention, but denied reenlistment because of RIF, retention control point, or denial of promotion.
 - c) $(\text{monthly base pay at discharge}) \times 12 \times (\text{yrs active duty}) \times 10\%$.
3. Half separation pay.
- a) Honorable or general discharge.
 - b) Not fully qualified for retention and being involuntarily separated because of ETS, selected changes in service obligation (i.e., QMP), convenience of the government, homosexual conduct, alcohol or drug abuse rehabilitation failure, or security.
 - c) One half of the formula in para F.2.c. above.
4. No separation pay.
- a) Any soldier who *requests* discharge (i.e., Chap 6 (Dependency or Hardship), Chap 8 (Pregnancy), Chap 10 (In Lieu of Trial by Court-Martial), or para 16-5 (voluntary discharge of soldier denied reenlistment)).
 - b) Any separation during first term of enlistment.
 - c) Any separation under Chap 13 (Unsatisfactory Performance), Chap 14 (Misconduct), dropped from the roles, or court-martial sentence.
 - d) Any OTH discharge.

VI. COMMAND-INITIATED (INVOLUNTARY) SEPARATIONS.

A. Convenience of the Government, Chap 5.

1. Secretarial Plenary Authority (Chap 5, Section II).
 - a) Requires DA approval.
 - b) Honorable, general, or entry level (uncharacterized) discharge.
 - c) Ordinarily used when no other provision applies (i.e. HIV infection, refusal to submit to medical care, religious practices cannot be accommodated, or separation authority wants to take action more adverse to soldier than that recommended by an administrative discharge board).
 - d) Standard: Early separation in the best interest of the Army or of the soldier.
 - e) No requirement for administrative board hearing, regardless of soldier's time in service.
2. Involuntary Separation Due to Parenthood, para 5-8.
 - a) Basis. "Parental obligations interfere with fulfillment of military responsibilities [such as] repeated absenteeism, late for work, inability to participate in field training exercises or perform special duties such as CQ and Staff Duty NCO, and nonavailability for worldwide assignment or deployment according to the needs of the Army." Para 5-8a.
 - b) Counseling with a view towards separation required.
 - c) Honorable, general, or entry level (uncharacterized) discharge.
 - d) Separation authority: SPCMCA.
 - e) See AR 600-20, Army Command Policy, para 5-5 (13 May 02), for requirements for single soldiers and soldiers married to service members to prepare family care plans.

3. Personality Disorder, para 5-13.
 - a) Deeply-ingrained maladaptive pattern of behavior of long duration that interferes with assignment or duty performance.
 - b) Psychiatrist or doctoral-level clinical psychologist must make diagnosis.
 - c) Counseling and opportunity to overcome deficiency required.
 - d) Honorable or entry-level discharge required under most circumstances. General discharge available only for soldier who has GCM conviction, or more than one SPCM conviction, in current enlistment.
4. Other Designated Physical or Mental Conditions, para 5-17.
 - a) Conditions that potentially interfere with assignment to or performance of duty, but not amounting to disability and excluding conditions appropriate for separation under paras 5-11 or 5-13.
 - b) Psychiatrist or doctoral-level clinical psychologist must make diagnosis.
 - c) Counseling and opportunity to overcome deficiency required.
 - d) Honorable discharge or entry-level appropriate under most circumstances. General discharge available with notice procedures, but normally not appropriate.
5. Other bases within Chap 5: surviving sons and daughters, aliens not lawfully admitted to the United States, lack of jurisdiction, soldiers who did not meet procurement medical standards, failure to qualify for flight training, concealment of arrest record, early separation to further education.
6. Para 5-15, failure to meet Army body fat composition or weight control standards, has been superseded by Chap 18, Failure to Meet Body Fat Standards.

B. Defective Enlistments, Reenlistments, and Extensions, Chap 7.

1. Fraudulent entry.

- a) Procurement of enlistment, reenlistment, or period of active service through deliberate misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection.
- b) Separation authority must apply three tests.
 - (1) Is information disqualifying?
 - (2) Is the apparently disqualifying information true?
 - (3) Did the soldier deliberately misrepresent or withhold it?
- c) Examples of fraudulent entry include concealment of prior service, true citizenship status, conviction by civil court, record as a juvenile offender, medical defects, absence without leave or desertion from a prior service, pre-service homosexual conduct, or other disqualification, or misrepresentation of intent with regard to legal custody of children.
- d) Honorable, general, under other than honorable conditions, or entry level separation.

2. Minority.

- a) Release from custody and control of the Army if soldier enlisted under 17 and has not yet attained that age.
- b) Discharge for minority is upon application of parents if soldier is under 18 and enlisted without written consent of parents.

3. Erroneous enlistments or reenlistments.
 - a) Enlistment is erroneous if:
 - (1) it would not have occurred had the relevant facts been known by the government or had appropriate directives been followed; and
 - (2) it was not the result of fraudulent conduct on the part of the soldier; and
 - (3) the defect is unchanged in material respects.
 - b) Soldier may be retained in service if retention is in the best interests of the Service and the disqualification may be waived.
 - c) Honorable, ELS, or release from custody and control.
4. Defective or unfulfilled enlistment or reenlistment.
 - a) Defective enlistment agreement. Soldier was eligible for enlistment but did not meet prerequisites for option for which enlisted. This situation exists in the following circumstances:
 - (1) A material misrepresentation by recruiting personnel, upon which the soldier reasonably relied and thereby was induced to enlist for the option, or
 - (2) An administrative oversight or error on part of recruiting personnel in failing to detect that the soldier did not meet all requirements for enlistment commitment, and
 - (3) Soldier did not knowingly take part in creation of the defective enlistment.
 - b) Unfulfilled enlistment commitment. Soldier received a written enlistment commitment for which the soldier was qualified, but which cannot be fulfilled by the Army, and soldier did not knowingly take part in creation of the unfulfilled commitment.
 - c) Honorable discharge or entry level separation.

C. Alcohol or Other Drug Abuse Rehabilitation Failure, Chap 9.

1. Basis. Soldier is enrolled in ADAPCP and commander determines:
 - a) That soldier lacks potential for future service and further rehabilitation efforts are not practicable; or
 - b) Long term rehabilitation is necessary and the soldier is transferred to a civilian medical facility for rehabilitation.
2. Mandatory initiation when a soldier is declared an alcohol or other drug abuse rehabilitation failure. AR 635-200, para 9-2, and AR 600-85, para 5-5.
3. Notification procedure.
4. Separation authority. LTC-level commander (but SPCMCA for board cases).
5. Honorable, general, or entry level separation. But honorable discharge required in any case in which the government initially introduces limited use evidence as defined by AR 600-85.

D. Entry Level Performance and Conduct, Chap 11.

1. Basis. Unsatisfactory performance or minor disciplinary infractions evidenced by inability, lack of reasonable effort, failure to adapt to military environment, or pregnancy which precludes full participation in training required to earn MOS (Military Occupational Specialty).
2. Soldier must be in an entry level status:
 - a) First 180 days of creditable continuous active duty; or
 - b) First 180 days of creditable continuous active duty following break in active service of more than 92 days.
 - c) Separation action must be initiated prior to the end of the 180th day.
3. Prior counseling and rehabilitative efforts are essential.

4. Rehabilitative transfer required. May be waived by separation authority *under extremely limited circumstances*. Para 1-16d.
5. Notification procedure.
6. Description of separation.
 - a) Soldiers who have completed Initial Entry Training or have been awarded a Military Occupation Specialty will be transferred to the Individual Ready Reserve unless the soldier has no potential for useful service under full mobilization.
 - b) All other soldiers separated under Chap 11 will receive an entry level separation with no characterization of service.
7. Separation authority. LTC-level commander for non-board cases. SPCMCA for board cases.

E. Unsatisfactory Performance, Chap 13.

1. For soldiers beyond entry level status.
2. Prior counseling with a view toward separation required.
3. Rehabilitative transfer required. May be waived by separation authority *under extremely limited circumstances*. Para 1-16d.
4. Mandatory grounds. Para 13-2. Unless the commander chooses to impose a bar, separation must be initiated for soldiers who:
 - a) Without medical reason fails two successive APFTs (*see also* AR 350-41).
 - b) Are eliminated for cause from an NCOES course.
5. Notification procedure.
6. Description of separation.
 - a) Characterization: Honorable or General.

- b) Soldiers who have completed IET or have been awarded a MOS will not necessarily be separated.
 - (1) If the characterization is Honorable, the soldier is transferred to the IRR.
 - (2) If the characterization is General, the soldier will be transferred to the IRR unless the soldier clearly has no potential for useful service under conditions of full mobilization (separation authority's decision).
- 7. Separation authority. LTC-level commander for non-board cases. SPCMCA for board cases.

F. **Misconduct**, Chap 14.

- 1. Overview. Chap 14 includes four separate grounds for separation:
 - a) Conviction by a civil court.
 - b) Pattern of minor military disciplinary infractions. .
 - c) Pattern of misconduct (military or civilian).
 - d) Commission of a serious offense.
- 2. Separation authority.
 - a) GCMCA or general officer in command with a JA or legal advisor for cases initiated under administrative board procedures (OTH possible).
 - b) SPCMCA:
 - (1) Discharge under OTH not warranted and notification procedures used. *This exception is used frequently.* An honorable discharge may be ordered only when the GCMCA has so authorized in the case.
 - (2) An administrative separation board recommends an entry level separation or general discharge.

- (3) An administrative separation board recommends an honorable discharge and GCMCA has authorized the exercise of separation authority in the case.
3. Conviction by a civil court. Para 14-5.
 - a) May be considered for discharge when initially convicted by civil authorities, if:
 - (1) A punitive discharge would be authorized for the same or closely related offense under the UCMJ, or
 - (2) The sentence by the civil authorities includes confinement for 6 months or more, without regard to suspension or probation.
 - b) If separation action is initiated by the immediate commander, the case will be processed through the chain of command to the separation authority.
 - c) Execution of discharge is withheld until soldier indicates in writing that he won't appeal the civilian conviction, until time for appeal expires, or until soldier's term of service expires, whichever is earlier.
 - d) Retention should be considered only in exceptionally meritorious cases when clearly in the best interest of the Army.
4. Minor (military) disciplinary infractions. Para 14-12a.
 - a) A pattern of misconduct consisting solely of minor military disciplinary infractions.
 - b) Prior counseling with a view toward separation required.
 - c) Rehabilitative transfer or waiver required.

5. **Pattern of Misconduct.** Para 14-12b.
 - a) Discreditable involvement with civil or military authorities.
 - b) Conduct prejudicial to good order and discipline.
 - c) Prior counseling with a view toward separation required.
 - d) Rehabilitative transfer or waiver required.

6. **Commission of a serious offense.** Para 14-12c.
 - a) Specific circumstances of the offense (military or civilian) warrant separation, and a punitive discharge would be authorized for the same or closely related offense under the MCM.
 - b) AWOL or desertion.
 - c) Abuse of illegal drugs.
 - (1) Handled under the above provisions if not handled by either a court-martial authorized to impose a punitive discharge or by separation UP AR 635-200, Chap 9, Alcohol or Other Drug Abuse Rehabilitation Failure.
 - (2) Criteria. AR 635-200, para 14-12c.
 - (a) All soldiers identified as illegal drug abusers , with the exception of self-referrals to ASAP, will be processed for separation. See ALARACT Message, DAPE-MPE, Subject: Clarification of Enlisted Separation Policy for Misconduct-Abuse of Illegal Drugs, 161152Z SEP 02
 - (b) Note that the message and AR 600-85 requires initiation of separation proceedings, but does not mandate discharge. The separation action will be initiated and processed through the chain of command to the separation authority, who will exercise discretion, on a case-by-case basis, in directing retention or discharge of the soldier.

- (c) All medically-diagnosed drug dependent soldiers will be processed for separation after detox.
- (d) Any soldier involved with illicit trafficking, distributing, or selling will be processed for separation unless the case is referred to a court-martial empowered to adjudge a punitive discharge. AR 600-85, para 1-35b.

7. Procedure.

- a) Administrative board procedure - if OTH warranted.
- b) Notification procedure - if OTH is not warranted.

8. Description of separation. Honorable, general, OTH, or entry level separation.

G. Discharge for Homosexual Conduct, Chap 15.

1. Grounds for Separation. National Defense Authorization Act FY 94 (10 U.S.C. § 654) (Effective 30 Nov 93). Codifies homosexual exclusion policy. Requires separation of a soldier who:
 - a) "... has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts,"
 - b) "... has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding ... that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts," or
 - c) "... has married or attempted to marry a person known to be of the same biological sex."
2. Definitions. Several definitions are key to understanding the new legislation and its implementation. Some of the definitions are found in the statute; others are provided in the implementing DoD guidance.

- a) Homosexual means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.
- b) Homosexual conduct means a homosexual act, a statement by the soldier that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.
- c) Homosexual act means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purposes of satisfying sexual desires; and any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in such bodily contact.
- d) Homosexual statement means language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. (See ref f). Includes statement “I have a homosexual orientation.”.
- e) Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

3. Accessions.

- a) Don't ask. Applicants will not be asked to reveal their sexual orientation or whether they have engaged in homosexual conduct.
- b) All applicants will be informed of the separation policy for homosexual conduct.
- c) If applicant volunteers homosexual orientation, or if recruiter comes across independent evidence of homosexual acts, applicant will be rejected.

4. Investigations.
- a) Only a commander in the chain of command of a suspected homosexual can authorize an investigation or inquiry.
 - b) Investigations may be initiated only when there is “credible information that there is a basis for discharge.”
 - c) “Credible Information ...”
 - (1) Exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that a service member has engaged in homosexual conduct. It requires a determination based on articulable facts, not just a belief or suspicion.
 - (2) Does not exist, for example, when “the only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.”
 - d) Informal fact-finding inquiries and administrative separation procedures are the preferred way of addressing homosexual conduct.
 - e) Neither CID nor MPI will conduct investigations solely to determine the sexual orientation of an individual.
 - f) If the misconduct is purely private, consensual, adult misconduct, the CID may investigate only if the information is either referred to them by the unit commander, or the local CID unit receives approval to investigate from the commander or deputy commander, USACIDC.
 - g) If case involves only statements (e.g., “I am gay”), or only private, consensual, adult sexual misconduct, scope of investigation should be limited to “the factual circumstances directly relevant to the specific allegations.”

- h) When interviewing soldiers suspected of homosexual conduct:
 - (1) The military policy on homosexual conduct should be explained to the soldier before questioning. The interviewer will not ask questions if the soldier indicates a reluctance to talk.
 - (2) Soldiers will be advised of Art 31 rights if suspected of UCMJ violation.
 - (3) “Statement” case. May inquire into whether soldier has engaged in, attempted to engage in, or intends to engage in homosexual acts or marriages. May ask soldier why he or she made statement; what he or she means by it.
 - (4) “Acts” case. Discuss only the alleged conduct. May seek specific details to test credibility, to corroborate statement, to assess criminality of acts, to determine whether aggravating circumstances are present, to obtain information to counter a possible rebuttal by soldier, and to determine possible basis for recoupment by government.
 - (5) Soldiers shall not be asked to reveal sexual orientation.

5. Separations.

- a) Administrative board procedure used in all enlisted cases.

- b) Soldiers will be separated if there is an approved finding of homosexual conduct. Exceptions:
- (1) **Rebuttable presumption for cases based solely on admissions.** Admission of being a homosexual or having a homosexual orientation creates a rebuttable presumption of propensity or intent to engage in homosexual acts. Burden of proof shifts to soldier. In determining whether a soldier has successfully rebutted the presumption, some or all of the following may be considered (this is not an exclusive list):
 - (a) Whether the member has engaged in homosexual acts.
 - (b) The member's credibility.
 - (c) Testimony from others about the members past conduct, character, and credibility.
 - (d) The nature and circumstances of the member's statements.
 - (e) Any other evidence relevant to whether the member is likely to engage in homosexual acts.
 - (2) **Homosexual act committed by a heterosexual.** A soldier may be retained after commission of a homosexual act if and only if the following findings are made. The soldier bears the burden of proving *all* the following items to the board's satisfaction:
 - (a) Such conduct is a departure from the soldier's usual and customary behavior.
 - (b) Such conduct is unlikely to recur.
 - (c) Such conduct was not accomplished by use of force, coercion, or intimidation.
 - (d) Under the particular circumstances of the case, soldier's continued presence is consistent with

the interests of the Service in proper discipline, good order, and morale.

(e) The soldier does not have a propensity or intent to engage in homosexual acts.

(3) Homosexual conduct for purposes of avoiding or terminating military service. If the commander or board believes that the individual is not a homosexual but is merely trying to avoid military service, the soldier does not have to be discharged.

c) Characterization of service.

(1) Honorable, general, or entry level separation.

(2) Under Other Than Honorable (OTH) conditions. Authorized if, during a current term of service, the soldier attempted, solicited, or committed a homosexual act:

(a) By use of force, coercion, or intimidation.

(b) With a person under 16 years of age.

(c) With a subordinate in circumstances that violate customary military superior-subordinate relationships.

(d) Openly in public view.

(e) For compensation.

(f) Aboard a military vessel or aircraft.

(g) In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

d) Separation Authorities. Enlisted separation authorities are:

- (1) GCMCA (when command seeks OTH).
- (2) SPCMCA (when command does not seek OTH).

6. Reporting Requirement.

- a) All Army legal offices (including reserve component) are required to *report* pending homosexual discharge cases to OTJAG Administrative Law Division.
- b) Initial report made on initiation of separation action; subsequent report made following ultimate disposition.
- c) Report by fax (fax (703) 693-2518; voice (703) 614-4586).
- d) Separation authority remains with local commanders.

7. Recoupment.

- a) 10 U.S.C. § 2005 & 37 U.S.C. § 308, as amended by NDAA FY 94.
- b) Soldiers (and cadets) receiving "advanced education assistance" must enter into written agreements providing for pro rata reimbursement of such educational assistance if the soldier, "voluntarily or because of misconduct," fails to complete the agreed upon period of service. The same standard applies to pro rata recoupment of enlisted bonuses when the enlisted soldier is separated prior to the end of the agreed service obligation.
- c) Separation for homosexual conduct requires recoupment only if the conduct:
 - (1) Was punishable under the UCMJ.
 - (2) Would authorize an OTH discharge.
 - (3) Was committed for the purpose of seeking separation.

- d) Soldiers being processed for separation due to homosexual conduct that requires recoupment should be informed of the possibility of recoupment in the notification of separation.
- e) In cases where recoupment might be appropriate, separation boards should make specific findings on the issue of recoupment. If the board is waived, the separation authority must make specific findings.
- f) Coordinate all potential recoupment cases with HQDA (DAPE-MP).

H. Failure to Meet Body Fat Standards, Chap 18.

- 1. Soldier must first be given a reasonable opportunity to comply with and meet weight reduction goals.
- 2. Soldier must not have a medical condition that precludes them from participating in the Army body fat reduction program.
- 3. Initiation of separation or bar to reenlistment mandatory for soldiers who do not make satisfactory progress and still exceed the body fat standards for any two consecutive months, or after a period of 6 months in the Army body fat reduction program.
- 4. Initiation of separation required for soldiers who fail to maintain body fat composition standards during the 24-month period following removal from the program.
- 5. Sole basis for separation is failure to meet weight control standards under the provisions of AR 600-9. Will not be used to separate a soldier who meets the criteria for separation under other provisions of AR 635-200.
- 6. Notification procedure.
- 7. Honorable discharge or entry level separation.
- 8. Separation authority is LTC level commander; SPCMCA, if there is a board.

- I. Qualitative Management Program, Chapter 19.
 - 1. NCOs whose performance, conduct, and/or potential for advancement do not meet Army standards.
 - 2. HQDA boards screen RA NCOs (SSG-CSM/SGM) and USAR AGR NCOs (SGT-CSM/SGM).
 - 3. Soldier notified and given opportunity to appeal.
 - 4. Approval authority is DCSPER.
 - 5. Honorable discharge.

VII. SOLDIER-INITIATED (VOLUNTARY) SEPARATIONS.

- A. Expiration of Service Obligation, Chap 4.
 - 1. Rarely any JAG involvement.
 - 2. Honorable or entry level discharge.
 - 3. Beware of inadvertent ETS discharge of soldier for whom the command is contemplating adverse action. See paras 1-21 through 1-28.
- B. **Dependency or Hardship**, Chap 6.
 - 1. Bases.
 - a) Dependency. Death or disability of a member of a soldier's (or spouse's) immediate family causes an immediate family member to rely upon the soldier for principal care of support.
 - b) Hardship. Separation from the Army will materially affect the care or support of the family by alleviating undue and genuine hardship.
 - 2. Voluntary request by soldier.
 - 3. Separation authority: SPCMCA.

4. Honorable, General, or Entry Level (uncharacterized) discharge possible. General requires notification procedure.

C. Separation of Enlisted Women -- Pregnancy, Chap 8.

1. Bases.
 - a) Normal Pregnancy. An enlisted woman is pregnant and has been counseled IAW para 8-9, AR 635-200.
 - b) Abnormal Pregnancy. An enlisted soldier carries a pregnancy for 16 weeks or more, but then has an abortion, miscarriage, or an immature or premature delivery before separation.
2. Voluntary; soldier must request separation.
3. Request must generally be approved.
4. Soldier may request a specific separation date, but separation authority, in consultation with treating physician, sets the date. Date may be no later than thirty days before expected delivery date.
5. Soldier will not be separated overseas except at her home of record. (Soldiers assigned overseas are processed through stateside separation facility).
6. Prohibited when separation has been initiated under a different chapter of AR 635-200.
7. If soldier is under investigation, charges, or serving court-martial sentence, Chap 8 request may be approved with consent of GCMCA.
8. Separation authority: LTC-level commander.
9. Honorable or Entry Level (uncharacterized). General, if notification procedures listing specific factors warranting characterization used.

D. Discharge in Lieu of Trial by Court-Martial, Chap 10.

1. Chap 10 previously titled "Discharge for the Good of the Service."

2. Two independent bases.
 - a) Preferral of charges, the punishment for which, under the UCMJ, includes a punitive discharge, OR
 - b) Referral of charges to a court-martial authorized to adjudge a punitive discharge where the enhanced punishment provisions of RCM 1003(d), MCM, are relied upon.
 3. Voluntary request by soldier.
 4. Consulting counsel advises soldier concerning elements of offense, burden of proof, possible defenses, possible punishments, requirement of voluntariness, type of discharge, withdrawal rights, loss of VA benefits, and prejudice in civilian life because of discharge.
 5. Disciplinary proceedings are neither suspended nor abated by submission.
 6. Statements submitted by the accused in connection with the request for discharge are not admissible against the accused at courts-martial, except as provided for in Military Rule of Evidence 410.
 7. Withdrawal permitted only with consent of the GCMCA unless trial results in acquittal or sentence does not include a punitive discharge.
 8. Separation authority.
 - a) GCMCA.
 - b) SPCMCA where authority has been delegated to act in certain cases (para 10-7) (*rare*: commander of Personnel Confinement Facility, only charge is AWOL, prior to trial, specific delegation of authority). Cannot disapprove.
 9. Most requests approved with Other Than Honorable discharge. Although the regulation provides for Honorable, General, or entry level (uncharacterized) separations.
- E. **Retirement** for Length of Service, Chap 12. Usually not considered an "administrative discharge" at all.

- F. Selected Changes in Service Obligation, Chap 16. Chap 16 contains ten grounds for discharge.
1. Order to active duty as a commissioned or warrant officer.
 2. Discharge for acceptance into a program leading to a commission or warrant officer appointment.
 3. Discharge for the purpose of immediate enlistment or re-enlistment.
 4. Non-retention on AD. (only USAR AGR soldiers who have a local bar to reenlistment may request voluntary separation, not RA soldiers)
 5. Overseas returnees.
 6. Early separation due to disqualification for duty in MOS.
 7. Early separation due to reduction in force, strength limitations, or budgetary constraints.
 8. Separation of soldiers of medical holding detachments/companies.
 9. Separation of personnel assigned to installations or units scheduled for inactivation or permanent change of station.
 10. Holiday early transition program.

VIII. CONCLUSION.